

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1347

Land Management

**SPONSOR(S):** Williams

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2102

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee		Perkins	Kliner
2) Agriculture & Environment Appropriations Committee			
3) State Resources Council			
4) _____			
5) _____			

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**SUMMARY ANALYSIS**

The bill, in part:

- Creates the “Babcock Ranch Preserve Act” and establishes the Babcock Ranch Preserve to protect and preserve the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Babcock Ranch Preserve and to provide for the multiple use and sustained yield of the renewable surface resources within the Babcock Ranch Preserve.
  - Authorizes the creation of a not-for-profit corporation known as “Babcock Ranch, Inc. The purpose of Babcock Ranch, Inc., is to provide the following:
    - a) Management and administrative services for the Babcock Ranch Preserve
    - b) Management policy establishment and implementation
    - c) Cooperation with state agencies to further the purposes for which the Babcock Ranch Preserve was created
    - d) Administrative and accounting procedures for the operation of the Babcock Ranch, Inc.
- Upon a determination by the Board of Trustees of the Internal Improvement Trust Fund, no later than 60 days before the termination of the preliminary management agreement, the bill stipulates that Babcock Ranch, Inc. shall assume all authority to manage the Babcock Ranch Preserve. The preliminary management agreement term is for a five-year period and will automatically be extended for an additional five year period.
- The bill provides that upon the dissolution of Babcock Ranch, Inc. for any reason, the management responsibilities shall revert to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services.
- Provides that Babcock Ranch, Inc. shall be governed by a nine-member governing board whose members will be appointed to staggered terms. The Board of Trustees of the Internal Improvement Trust Fund and the executive director of the Fish and Wildlife Conservation Commission shall make the initial appointments of the Babcock Trustees no later than 90 days after the initial acquisition of the Babcock Ranch by the state.
  - Requires Babcock Ranch, Inc. to establish various business operation requirements relating to:
    - a) Finances
    - b) Reports
    - c) Legal
    - d) Development of comprehensive management plan

The fiscal impact on this bill is indeterminate.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates a not-for-profit corporation known as “Babcock Ranch, Inc.,” to ultimately manage the Babcock Ranch Preserve.

Safeguard Individual Liberty: The bill creates a not-for-profit corporation known as “Babcock Ranch, Inc.,” to ultimately manage the Babcock Ranch Preserve.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Babcock Ranch**

The area known as the “Babcock Ranch” covers an area of 143 square miles and is comprised of 81,499 acres in Charlotte County and 9,862 acres in Lee County. The Babcock Ranch is a Florida Forever Group A project which was added to the acquisition list in 2001. The Babcock Ranch is home to the Florida panther, Florida black bear and other threatened and endangered wildlife. The ranch includes large, well managed areas of pine and scrubby flatwoods along with a highly functional freshwater swamp system known as Telegraph Swamp. The acquisition of the Babcock Ranch would complete a massive natural land corridor from Lake Okeechobee to the Gulf of Mexico.

Currently, the Babcock Ranch includes tenant farms for watermelon and tomatoes on about 4,000 acres, 1,000 acres of sod farming, 2,000 acres of permitted mining activities, and 20,000 acres of improved pasture land. Public access to 6,000 acres covering six miles is provided through guided eco-tours by Babcock Wilderness Adventures, Inc. Hunting activities are authorized on 61,000 acres through 22 private annual hunting leases covering an average of 5,000 acres per lease. Prescribed burning activities are conducted on approximately 25,000 acres and 72,000 acres are in native vegetation and are grazed rotationally.

On November 22, 2005, the Board of Trustees of the Internal Improvement Trust Fund approved the Agreement for Sale and Purchase for the state to acquire approximately 74,000 acres of the Babcock Ranch for a total price of \$350 million. As part of the acquisition agreement, Babcock Ranch Management LLC has agreed to manage all land to be purchased by the State in accordance with the State’s land management plan that will be developed after the initial acquisition in July 2006. The preliminary management agreement will preserve and sustain the quality of the property as conservation land and habitat for many plant and animal ecosystems and prevent any use which would threaten the conservation value. The manager of the ranch will be required to re-invest any profits made from the ranch or other businesses on the property back into the management and preservation of the land. This preliminary management agreement will be for a five-year period and will automatically be extended for an additional five year period.

Due to the complexity of balancing a working ranch, outdoor recreation and wildlife management, the state is proposing that a not-for-profit agency be established to manage the ranch. Pending approval and creation by the Legislature, the non-profit agency would have a board of directors with a diverse range of expertise in land management, ranch operations, wildlife management and outdoor recreation. Following the fulfillment of Babcock Ranch Management LLC obligations, the not-for-profit agency would assume full responsibility for managing the land and ranch.

##### **Effect of Proposed Change**

The bill creates section 259.1053, F.S., to be cited as the “Babcock Ranch Preserve Act.” The bill provides that the Babcock Ranch must be protected for current and future generations by continued

operation as a working ranch under a unique management regime that protects the land and resource values of the property and surrounding ecosystems while allowing the ranch to become financially self-sustaining.

### Babcock Ranch Preserve

The bill provides definitions relating to the act and upon the date of acquisition of the Babcock Ranch, there is established the "Babcock Ranch Preserve." The Babcock Ranch Preserve is established to protect and preserve the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the preserve and to provide for the multiple use and sustained yield of the renewable surface resources within the preserve.

### Babcock Ranch, Inc.

The bill states that the management regime will "best be provided through the creation of a nonprofit public-private entity that is capable of developing and implementing creative methods of public land management that will prove to be cost-effective and environmentally sensitive." The bill creates a not-for-profit corporation known as "Babcock Ranch, Inc.," that will be registered, incorporated, organized, and operated in this state and not be a unit or entity of state government. The purpose of Babcock Ranch, Inc. is to provide the following:

- Management and administrative services for the Babcock Ranch Preserve
- Establish and implement management policies
- Cooperate with state agencies to further the purposes for which the Babcock Ranch Preserve was created
- Establish the administrative and accounting procedures for the operation of the Babcock Ranch, Inc.

The bill provides that the Babcock Ranch, Inc. is subject to the provisions of chapter 119, F.S., relating to public records and those provisions of chapter 286, F.S., relating to public meetings and records for any meetings of Babcock Ranch, Inc. The dissolution of Babcock Ranch, Inc. may only occur by an act of the Legislature.

The bill authorizes Babcock Ranch, Inc. the ability to appoint and utilize advisory committees to assist in the particular function for which the committee was established. The bill provides that Babcock Ranch, Inc., and its officers and employees shall participate in the management of the Babcock Ranch Preserve in an "advisory capacity only" until the management agreement executed by Babcock Ranch management LLC and the Board of Trustees of the Internal Improvement Trust Fund, FWCC, and Department of Agriculture and Consumer Services, and Lee County is terminated or expires. The bill requires on or before the date on which title to the Babcock Ranch is vested in the state, Babcock Ranch Management LLC is to provide FWCC and the Department of Agriculture and Consumer Services their management plan and business plan in place for the operation of the ranch as of November 22, 2005, the date on which the Board of Trustees of the Internal Improvement Trust Fund approved the acquisition.

Upon a determination by the Board of Trustees of the Internal Improvement Trust Fund, no later than 60 days before the termination of the preliminary management agreement, the bill stipulates that Babcock Ranch, Inc. shall assume all authority to manage the Babcock Ranch Preserve.

The bill provides that Babcock Ranch Inc. shall assume management of the Babcock Ranch Preserve with input from FWCC and the Department of Agriculture and Consumer Services. The Babcock Ranch Inc. shall manage the land resources including but not limited to the following:

- Administration and operation of the Babcock Ranch Preserve
- Preservation and development of the land and renewable surface resources of the Babcock Ranch Preserve
- Interpretation of the Babcock Ranch Preserve and its history on behalf of the public
- Management, public use, and occupancy of facilities and lands within the Babcock Ranch Preserve
- Maintenance, rehabilitation, repair, and improvement within the Babcock Ranch Preserve

The bill requires Babcock Ranch Inc. to develop reasonable procedures for entering into lease agreements and other agreements for the use and occupancy of the facilities of the Babcock Ranch Preserve. State laws and rules governing the procurement of commodities and services by state agencies shall apply to Babcock Ranch Inc.

The bill provides that Babcock Ranch Inc. may not:

- Dispose of any real property
- Enter into any contract, lease, or other agreement related to the use of ground or surface waters on or through property title in the name of the Board of Trustees of the Internal Improvement Trust Fund, and must obtain any permits that are required by the Department of Environmental Protection and the appropriate water management district.
- Convey any easements. Any easements within the Babcock Ranch Preserve must be executed by the Board of Trustees of the Internal Improvement Trust Fund.
- Enter into any contract, lease, or other agreement related to the use and occupancy of the Babcock Ranch Preserve for a period of greater than 10 years.

The bill authorizes Babcock Ranch, Inc. to assess independent reasonable fees for admission to utilize the Babcock Ranch Preserve to offset the costs of operating the Babcock Ranch Preserve as a working ranch.

The bill provides that upon the dissolution of Babcock Ranch, Inc. for any reason, the management responsibilities shall revert to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services.

**Babcock Trustees**

The bill provides that the Babcock Ranch, Inc. shall be governed by a nine-member governing board whose members will be appointed to staggered terms. The Board of Trustees of the Internal Improvement Trust Fund and the executive director of the Fish and Wildlife Conservation Commission shall make the initial appointments of the Babcock Trustees no later than 90 days after the initial acquisition of the Babcock ranch by the state. The table below illustrates the composition of the Babcock Trustees:

<b>Babcock Trustee Member Appointment</b>	<b>Qualification Criteria</b>	<b>Term Limits</b>
Board of Trustees of the Internal Improvement Trust Fund (Five members)	<ul style="list-style-type: none"> <li>• At least one member must be a resident of Charlotte County</li> <li>• At least one member must be a resident of Lee County</li> <li>• One appointee must have expertise in domestic livestock management and livestock business management</li> <li>• One appointee must have expertise in the management of game and nongame wildlife fish populations, including hunting, fishing, and other recreational activities</li> <li>• One appointee must have expertise in the sustainable management of forest lands for commodity purposes</li> <li>• One appointee must have expertise in financial management, budget and program analysis, and small business operations</li> <li>• One appointee must be active in a not-for-profit conservation organization concerned with the activities of the ranch</li> </ul>	<ul style="list-style-type: none"> <li>• Four initial members (4-yrs.)</li> <li>• One initial member (2-yrs.)</li> </ul>
Executive Director, Fish and Wildlife Conservation Commission (One member)	One member who has expertise in hunting, fishing, nongame species management or wildlife habitat management, restoration, and conservation.	One initial member (2 –yrs.)
Babcock Florida Company (One member)	One member who has expertise in the activities and management of the Babcock Ranch as of the date of acquisition	One initial member (2 –yrs.)

	by the state.	
President of the Senate (One member)	One member of the public having expertise in any area of ranch operations.	One initial member (2 -yrs.)
Speaker of the House of Representatives (One member)	One member of the public having expertise in any area of ranch operations.	One initial member (2 -yrs.)
<b>Note Relating To Term Limits:</b> Each trustee appointed after the initial appointments by the Board of Trustees of the Internal Improvement Trust Fund and Fish and the Wildlife Conservation Commission shall be appointed to a 4-year term. Any vacancy among the trustees shall be filled in the same manner as the original appointment and any trustee appointed to fill a vacancy shall be appointed for the remainder of that term. No trustee may serve more than 8 years in consecutive terms.		
<b>Meeting Requirements:</b> At least three times per year at the call of the chair in Charlotte or Lee County in sessions open to the public.		
<b>Chair, Executive Director and Employees:</b> Trustee's shall elect a chair from among their membership and may appoint and fix the compensation and duties of an executive director of Babcock Ranch, Inc. along with any other officers and employees as the trustee's deem necessary. Officers and employees of Babcock Ranch, Inc. are not employees of the state but are private employees. At the request of the trustee's, the state may provide state employees for the purpose of assist the trustees to implement the requirements of this bill. Any state employee assisting for more than 30 days shall be provided on a reimbursable basis.		
<b>Trustee Removal Criteria:</b> A member of the Babcock Trustees may be removed for cause by the official who appointed that member and that absence from three consecutive meetings results in an automatic removal from the Babcock Trustees.		
<b>Trustee Compensation:</b> Members serve without compensation, but are entitled to receive from funds of Babcock Ranch, Inc. reimbursement for per diem and travel expenses as provided by section. 112.061, F.S.		
<b>Trustee Liability;</b> There shall be no liability on the part of, and no cause of action shall arise against, any member of the Babcock Trustees, or the employees or agents of the corporation, for any action taken in the performance of powers and duties.		
<b>Surety Bond:</b> Each trustee must give the Board of Trustees of the Internal Improvement Trust Fund a sufficient surety bond in the sum of \$5,000, the cost being borne by the Babcock Ranch, Inc. conditioned on the trustee's faithful performance of their duties as a member of the governing board of Babcock Ranch, Inc.		
<b>Trustee Powers:</b> Trustees will have all necessary and proper powers for the exercise of the authorities vested in Babcock Ranch, Inc. including, but not limited to, the power to solicit and accept donations of funds, property, supplies, or services from individuals, foundations, corporations, and other public or private entities. All funds received by Babcock Ranch, Inc. shall be deposited into an authorized operating fund unless otherwise directed by the Legislature. The trustees may with the written approval of the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services, designate hunting, fishing, and trapping zones and establish additional periods when hunting, fishing, or trapping are not permitted for reasons of public safety, administration, and the protection and enhancement of nongame habitat and nongame species.		

The bill states that the Babcock Trustee may not:

- Be an officer, a director, or a shareholder in any entity that contracts with or receives funds from the Babcock Ranch, Inc. or its subsidiaries
- Vote in any official capacity upon any measure that would inure to their private gain or loss; that would inure to the special private gain or loss of any principal by who the trustee is retained or to the parent organization or subsidiary of a principal by which the trustee is retained; or that the trustee would inure to the special private gain or loss of a relative or business associate of the trustee. Prior to any vote being taken, the trustee shall publicly state the nature of the trustee's interest in the matter from which the trustee is abstaining from voting and no later than 15 days after the vote occurs, disclose the nature of the trustee's interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.

#### Babcock Ranch, Inc. Financial Matters

The bill provides for Babcock Ranch, Inc., to establish and manage an operating fund, with a cash balance reserve that is equal to not more than 25 percent of its annual operating expenses, for the unique cash-flow needs associated with facilitating the fiscal management of Babcock Ranch, Inc. The bill stipulates that upon dissolution of Babcock Ranch, Inc., any remaining cash balances of funds shall revert back to the General Revenue Fund or to other state funds consistent with any appropriated funding.

The bill requires Babcock Ranch, Inc., to prepare an annual budget with the goal of achieving a financially self-sustaining operation within 15 full fiscal years after management of the Babcock Ranch Preserve begins. The Department of Agriculture and Consumer Services is directed to provide

assistance relating to the annual budget request for appropriations and may not deny a request or refuse to include in its annual legislative budget submission a request for appropriations from Babcock Ranch, Inc.

The bill stipulates that all moneys received from donations or from the management of the Babcock Ranch Preserve shall be retained by Babcock Ranch, Inc. in the operating fund and shall be available for the various operational expenses. The bill provides that except for the reversion of funds appropriated to the Babcock Ranch, Inc. or as otherwise provided by the Legislature, moneys received by Babcock Ranch, Inc. from the management of the Babcock Ranch Preserve are not subject to distribution to the state. The bill requires Babcock Ranch, Inc. to optimize the generation of income based on existing market conditions to the extent that activities do not unreasonably diminish the long-term environmental, agricultural, scenic, and natural values of the Babcock Ranch Preserve, or the multiple-use and sustained-yield capability of the land.

#### Babcock Ranch, Inc. Reporting Requirements

The bill requires Babcock Ranch, Inc. to provide for an annual financial audit by an independent certified public accountant. The audit report is required to be submitted no later than nine months after the end of the fiscal year to the Auditor General, the President of the Senate, the Speaker of the House of Representatives, and the appropriate substantive and fiscal committees of the Legislature.

The bill requires by January 15 of each year, Babcock Ranch, Inc. to submit a comprehensive and detailed report of its operations, activities, and accomplishments for the prior year along with goals for that current year to the Board of Trustees of the Internal Improvement Trust Fund, the President of the Senate, the Speaker of the House of Representatives, the Department of Agriculture and Consumer Services, and the Fish and Wildlife Conservation Commission.

#### Babcock Ranch, Inc. Legal and Insurance Related Matters

The bill requires Babcock Ranch, Inc. to adopt articles of incorporation and bylaws necessary to govern its activities. The bill stipulates that Babcock Ranch, Inc. may sue and be sued in its own name and shall be represented by the Attorney General. The bill also authorizes Babcock Ranch, Inc. to retain private attorneys to provide advice and counsel, if needed.

The bill requires all parties in contract and that hold a lease with Babcock Ranch, Inc. to procure insurance of an amount reasonable or customary to insure against any loss in connection with such properties or with activities authorized in such leases or contracts.

The bill grants Babcock Ranch, Inc. the exclusive right to utilize its corporate name and any seal, emblem, or insignia adopted by the Babcock Trustees along with providing certain prohibitions of such use.

#### Development of Comprehensive Management Plan for Babcock Preserve

The bill requires Babcock Ranch, Inc. not less than two years before it assumes management responsibilities for Babcock Ranch Preserve, to seek input from the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services in order to develop a comprehensive management plan for the Babcock Preserve. The comprehensive management plan must provide for the following:

- Operation as a working ranch
- Protection and preservation of the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Babcock Ranch Preserve.
- Multiple use and sustained yield of renewable surface resources within the Babcock Ranch preserve
- Public use of and access to the Babcock Ranch Preserve
- Renewable resource use and management alternatives that benefit local communities and enhance the coordination of management objectives with those on surrounding lands.

The bill provides that any final decision to adopt or amend the comprehensive management plan or any activity related to the management of the land by the Babcock Trustees shall be made in sessions that are open to the public for comment.

The bill provides that the comprehensive management plan for the Babcock Ranch Preserve can only be implemented by Babcock Ranch, Inc. upon the expiration of the initial management agreement with Babcock Ranch Management LLC.

C. SECTION DIRECTORY:

Section 1. Creates section 259.1053, F.S., relating to the management of the Babcock Ranch Preserve.

Section 2. Provides the act will take effect July 1, 2006.

**IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: The overall fiscal impact of this bill is indeterminate. The Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services estimate interim land management funding to be \$1.9 million while recurring funding needs have not been calculated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides that the Babcock Ranch must be protected for current and future generations by continued operation as a working ranch under a unique management regime that protects the land and resource values of the property and surrounding ecosystems while allowing the ranch to become financially self-sustaining.

D. FISCAL COMMENTS: None.

**V. COMMENTS**

B. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

C. RULE-MAKING AUTHORITY:

No additional rule making authority is required to implement the provisions of this bill.

D. DRAFTING ISSUES OR OTHER COMMENTS: None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

N/A